

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Public hearing on Ordinance No. 6133 B-1 imposing an interim zoning ordinance regulating recreational marijuana producers, processors, and retailers.

STAFF CONTACTS

Lori Riordan, City Attorney 452-7220
City Attorney's Office

Carol Helland, Land Use Director 452-2724
Catherine A. Drews, Legal Planner 452-6134
Development Services Department

POLICY CONSIDERATION

Should the City extend the emergency ordinance regulating recreational marijuana producers, processors, and retailers for a period up to six months and direct staff to draft permanent regulations for Council consideration?

BACKGROUND

GMA Process Requirements. Allowed uses in the City are governed by the Bellevue Land Use Code (LUC). The LUC is a development regulation as defined by the Growth Management Act (GMA), Chapter 36.70A RCW. Legislative actions relating to the LUC must comply with the process requirements set forth in the GMA. The required process for passage of emergency "interim official controls¹" is set forth in RCW 36.70A.390, and is used when adoption of a code amendment is desired immediately and in a time period that is too short to meet the code amendment processing requirements. Council's adoption of Ordinance No. 6133 B-1 constituted imposition of an interim official control under the GMA.

By using the GMA "interim official control" adoption process, a Planning Commission public hearing was not required; however, under the GMA, the City Council must hold a public hearing within 60 days of adoption of the emergency ordinance. The public hearing scheduled for December 2 satisfies that requirement. Because the City Council adopted findings of fact when adopting Ordinance No. 6133 B-1, the City Council is not required to do so at the conclusion of this public hearing. (RCW 36.70A.390)

Procedural Background. Washington voters approved Initiative 502 legalizing the production, manufacturing, and retail sales of recreational marijuana in the 2012 General Election. The Washington State Liquor Control Board (LCB) is the state agency designated to develop and implement regulations for recreational marijuana uses, including a licensing program. At the July 15 Study Session, staff sought and received direction to develop recommendations for an emergency interim zoning ordinance implementing land use regulations for recreational

¹ An interim zoning ordinance is one type of an interim zoning control. A moratorium is another type.

marijuana producers, processors, and retailers. Under LCB's draft rules, the schedule for LCB to begin accepting license applications provided insufficient time for the City to pursue enactment of permanent zoning regulations using the process generally employed under the LUC for development of code amendments by the Planning Commission, with a public hearing and subsequent recommendation to Council. During the October 21 Study Session, staff presented recommendations related to regulating recreational marijuana producers, processors, and retailers. Council directed staff to return with an emergency ordinance for Council consideration and action, which staff did at the October 21 Study Session.

On October 21, the City Council adopted Emergency Ordinance No. 6133 B-1 implementing an interim official control regulating collective gardens. Ordinance No. 6133 B-1 is included as Attachment A. Council further directed staff to develop permanent regulations for recreational marijuana uses and to prepare and present planning principles for the Council's consideration and approval. The planning principles will assist the Planning Commission in developing permanent land use regulations to govern recreational marijuana uses. The proposed planning principles are included as Attachment B for the Council's consideration during the December 2 public hearing. At the conclusion of the public hearing, staff will ask Council for its approval of the planning principles or additional direction on the principles.

The emergency ordinance is limited to periods of up to six months, but it may be renewed for additional six-month periods provided that Council holds a public hearing within 60-days of each subsequent extension. The emergency ordinance regulating recreational marijuana producers, processors, and retailers will expire by its terms on April 24, 2014, unless Council extends the regulations for an additional six month period and holds the required public hearing.

ALTERNATIVES

1. Hold the required public hearing. At the close of the public hearing, approve the planning principles and direct staff to proceed to draft permanent regulations consistent with the emergency ordinance and the approved planning principles.
2. Hold the required public hearing. At the close of the public hearing, provide alternative direction to staff regarding the planning principles and to return with revised planning principles for Council consideration at a future date.

RECOMMENDATION

Hold the required public hearing. At the close of the public hearing, approve the planning principles and direct staff to proceed to draft permanent regulations consistent with the emergency ordinance and the approved planning principles

MOTIONS

1. Move to open the public hearing for comments on the emergency ordinance regulating recreational marijuana producers, processors, and retailers.

2. Move to close the public hearing and record on the emergency ordinance.
3. Approve the proposed planning principles.
4. Direct staff to present the approved planning principles to the Planning Commission to guide work on permanent regulations.

ATTACHMENTS

- A. Emergency Ordinance No. 6133 B-1 adopted October 21, 2013.
- B. Proposed Planning Principles.
- C. Affidavits of Publication of public notice on November 18, 2013.

AVAILABLE IN COUNCIL OFFICE

N/A

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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6133 B-1

AN ORDINANCE of the City of Bellevue, Washington, adopting interim official zoning controls regarding recreational marijuana producers, processors and retailers for a period of six months, to be in effect while the City drafts, considers, holds hearings and adopts permanent zoning regulations, to be effective immediately upon adoption, scheduling a hearing on the maintenance of the interim zoning ordinance and declaring an emergency.

WHEREAS, Washington votes approved Initiative 502 (I-502) on November 6, 2012. In relevant part, I-502 legalized the possession of small amounts of marijuana and marijuana-related products for persons age 21 and older, and directed the Washington State Liquor Control Board (LCB) to develop and implement rules to regulate and tax recreational marijuana producers, processors, and retailers by December 31, 2013; and

WHEREAS, the LCB re-filed its proposed rules regulating recreational marijuana uses on September 4, 2013, and accepted the proposed rules on October 16; and

WHEREAS, the LCB rules become effective on November 16, 2013, and the LCB will begin accepting license applications for recreational marijuana beginning November 18, 2013. Applicants will be required to identify a business location with their application submittals; and

WHEREAS, the LCB allocated four recreational marijuana retail licenses for the City of Bellevue, and there are no limits on the number of recreational marijuana producer and processor licenses to be issued; and

WHEREAS, the City of Bellevue Land Use Code (LUC) prohibits all recreational marijuana producers, processors, and retailers as uses in the City of Bellevue;

WHEREAS, the City Council deems it to be in the public interest to establish interim regulations advising the public where recreational marijuana producers, processors, and retail uses may be located in the City of Bellevue before the application deadline established by the LCB for state licensing for such uses; and

WHEREAS, the establishment or licensing of recreational marijuana uses may allow new uses that are incompatible with nearby existing land uses and lead to erosion of community character and harmony; and

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WHEREAS, marijuana is still classified as a schedule I controlled substance under federal law and crimes related to marijuana remain subject to prosecution under federal law; and

WHEREAS, On August 29, 2013, the United States Department of Justice, Office of the Attorney General, ("DOJ") released updated guidance regarding marijuana enforcement. The guidance reiterates that DOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats to public safety related to marijuana crimes in "the most effective, consistent, and rational way." The guidance directs federal prosecutors to review potential marijuana-related charges on a case-by-case basis and weigh all information and evidence, including whether the operation is demonstrably in compliance with a strong and effective state regulatory system and if the conduct at issue implicates one or more of the eight stated federal enforcement priorities. The DOJ appears to not differentiate application of the guidance between medical cannabis and recreational marijuana; and

WHEREAS, pursuant to RCW 36.70A.390 a public hearing must be held within 60 days of the passage of this ordinance; and

WHEREAS, establishment of interim regulations of six months in duration for establishment of recreational marijuana producers, processors, and retailers will prevent substantial change until the land areas and the text of development standards applicable to recreational marijuana uses is reviewed, and any needed revisions are made to city codes; and

WHEREAS, the potential adverse impacts upon the public safety, welfare, and peace, as outlined herein, justify the declaration of an emergency; now therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES
ORDAIN AS FOLLOWS:

Section 1. Interim Regulation Adopted. Recreational marijuana producers, processors, and retailers shall comply with the following provisions:

A. Definitions. For the purposes of this interim regulation only, the definitions provided below and the definitions codified at WAC 314-55-010, now provided or as hereafter amended, shall apply to the provisions of this ordinance.

1. "Director" means the Director of the City of Bellevue's Development Services Department or his designee.
2. "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of

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the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

3. "Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.
4. "Marijuana producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.
5. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" do not include useable marijuana.
6. "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.
7. "Retail outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.
8. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

B. Chapter 314-55 WAC, now or as hereafter amended, shall apply in addition to the provisions of this ordinance.

C. Limitations on Uses. The following limitations shall apply to all marijuana producers, processors, and retailers, unless stated otherwise:

1. A marijuana producer, retailer, or processor, shall not be located within 1,000 feet of the following uses or any use included in Chapter 314-55 WAC now or as hereafter amended:
 - a. Elementary or secondary school;
 - b. Playgrounds;
 - c. Recreation center or facility;
 - d. Child care centers;
 - e. Public parks;
 - f. Public transit centers;

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- g. Libraries;
 - h. Any game arcade or
 - i. Any medical cannabis collective garden.
- 2. No marijuana producer, processor, or retailer shall be allowed in single family and multi-family land use districts (R-1 – R-30).
- 3. No marijuana retailer is allowed as a subordinate or accessory use in any land use district.
- 4. Marijuana shall be grown in a structure. Outdoor cultivation is prohibited.
- D. Marijuana Retail Outlets. For the purposes of this interim ordinance, marijuana retail outlets are considered within the land use classification of "Miscellaneous Retail Trade," and shall comply with all corresponding notes in the use charts for the underlying land use district where the retail outlet is located. Retail outlets shall also comply with the applicable requirements of Chapter 20.25 LUC, Special and Overlay Districts. Marijuana odor shall be contained within the retail outlet so that odor from the marijuana cannot be detected by a person with a normal sense of smell from any abutting use or property. If marijuana odor can be smelled from any abutting use or property, the marijuana retailer shall be required to implement measures, including but not limited to, the installation of the ventilation equipment necessary to contain the odor. Retail outlets may only be located in following land use districts:
 - 1. General Commercial (GC);
 - 2. Community Business (CB);
 - 3. Factory Land Use District 1 (F1);
 - 4. Downtown Office District (DNTN O-1);
 - 5. Downtown Office District (DNTN O-2)
 - 6. Downtown Mixed Use District (DNTN-MU);
 - 7. Downtown Old Bellevue Business District (DNTN-OB);
 - 8. Downtown Office and Limited Business District (DNTN-OLB)
 - 9. Bel-Red Office Residential and Nodes (BR-OR/OR1/OR2)
 - 10. Bel-Red Residential Commercial and Nodes (BR-RC-1, RC-2, RC-3);
 - 11. Bel-Red General Commercial (BR-GC);
 - 12. Bel-Red Commercial Residential (BR-CR);
 - 13. Bel-Red Office Residential Transition (BR-ORT).
- E. Signage for Marijuana Retail Outlets. Retail outlets shall comply with WAC 314-55-155(1), now or as hereafter amended. Additionally, signage for retail outlets must undergo design review in those land use districts requiring such review in City of Bellevue Sign Code, Chapter 22B BCC.
- F. Marijuana Producers and Processors. For the purposes of this interim ordinance, marijuana producers are considered within the land use

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classification "Agricultural Production of Food and Fiber Crops," and marijuana processors are considered within the land use classification "Agricultural production." Marijuana processors and producers shall comply with all corresponding notes in the use charts for the Light Industrial land use district. Marijuana producers and processors shall also comply with the applicable requirements of Chapter 20.25 LUC, Special and Overlay Districts. Marijuana production and processing facilities are allowed only in the Light Industrial land use district and shall comply with the following provisions:

1. Marijuana production and processing facilities shall be ventilated so that the odor from the marijuana cannot be detected by a person with a normal sense of smell from any adjoining use or property;
 2. Signage for marijuana producers and processors shall comply with the City of Bellevue Sign Code, Chapter 22B of the Bellevue City Code.
 3. A screened and secured loading dock, approved by the director shall be required. The objective of this requirement is to provide a secure, visual screen from the public right of way and adjoining properties, and prevent the escape of odors when delivering or transferring marijuana, useable marijuana, and marijuana-infused products.
- G. Security. In addition to the security requirements in Chapter 315-55 WAC, during non-business hours, all recreational marijuana producers, processors, and retailers shall store all useable marijuana, marijuana-infused product, and cash in a safe or in a substantially constructed and locked cabinet. The safe or cabinet shall be incorporated into the building structure or securely attached thereto. For useable marijuana products that must be kept refrigerated or frozen, these products may be stored in a locked refrigerator or freezer container in a manner approved by the Director, provided the container is affixed to the building structure.

Section 3. Duration and Scope of Interim Regulations. The interim regulations imposed by this ordinance shall become effective on the date herein, and shall continue in effect for an initial period of sixty (60) days, unless repealed, extended, or modified by the City Council after subsequent public hearings and the entry of additional findings of fact pursuant to RCW 35A.63.220.

Section 4. Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council shall hold a public hearing on this ordinance within sixty (60) days of its adoption, or no later than December 20, 2013, so as to hear and consider public comment and testimony regarding this ordinance. Following such hearing, the City Council may adopt additional findings of fact, and may extend the interim regulations for a period of up to six (6) months. If a period of more than six months is required to complete consideration of any changes to city codes, the Council may adopt additional extensions after any required public hearing, pursuant to RCW 35A.63.220 and RCW 36.70A.390.

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Section 5. Permanent Regulations. The City Council hereby directs the staff to develop for its review and adoption permanent regulations to adopt the interim regulations adopted herein, and to transmit this ordinance to the Washington State Department of Commerce as required by law.

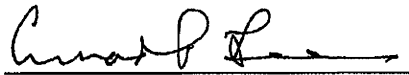
Section 6. Severability. Should any provision of this ordinance or its application to any person or circumstance be held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 7. Public Emergency. The City Council hereby finds and declares that a public emergency exists and that this ordinance is a public emergency ordinance necessary for the protection of the public health and safety and should, therefore, take effect upon adoption. The facts upon which this public emergency is based include all recitals set out in this ordinance as well as those facts contained in the legislative record.


Section 8. Effective Date. In accordance with RCW 35A.13.190, this ordinance, as a public emergency ordinance, shall take effect and be in force immediately upon adoption by a majority plus one of the City Council.

Passed by the City Council this 21st day of October, 2013
and signed in authentication of its passage this 21st day of October, 2013.


(SEAL)


Conrad Lee, Mayor

Approved as to form: ..


Lori M. Riordan, City Attorney

Attest:


Myrna L. Basich, City Clerk

Published October 24, 2013,

**DRAFT Proposed Project Principles for the
Regulation of Recreational Marijuana Producers, Processors, and Retailers
For Consideration by the Bellevue City Council**

December 2, 2013

1. Bellevue Appropriate. Bellevue will establish appropriate land use zones for recreational marijuana producers, processors, and retailers ("recreational marijuana uses"). To the extent permitted, Bellevue will establish performance standards consistent with applicable provisions of Chapter 69.50 RCW and Chapter 314-55 WAC, now or as hereafter amended, that ensure these business represent the community values and goals set forth in the City's Comprehensive Plan.
2. Neighborhood Character is Protected. Recreational marijuana uses shall not be located in residential land use districts. Recreational marijuana uses shall be separated by 1,000 feet from elementary or secondary schools (public or private), playgrounds, recreation center or facility; child care center; public park; public transit center; library; and game arcade where admission is not restricted to persons age twenty-one or older, or a medical cannabis collective garden. Recreational marijuana use shall use appropriate ventilation to ensure abutting uses or properties are not impacted by odor.
3. Security Measures are Required. Recreational marijuana uses must have sufficient security measures to protect the public. Recreational marijuana uses must conform to state requirements for security and secure usable marijuana consistent with state pharmacy requirements for securing controlled substances.
4. Regulations are Specific and Understandable. The permanent regulations should be specific about the requirements to locate and operate recreational marijuana uses so that qualified licensees understand what is expected under the regulation.
5. Administration and Enforcement is Straightforward. Ensure regulations are capable of being administered and enforced. Development Services and the Bellevue police department should collaborate in matters of approval of license applications and renewals and where appropriate, enforcement.
6. The Outcome is in Conformance with Applicable Law. The establishment and operation of recreational marijuana uses must conform with, and not frustrate, the purpose of state law. Recreational marijuana uses must conform to the applicable requirements of Chapter 69.50 RCW and Chapter 314-55 WAC, now or as hereafter amended.

7. Processing of the Amendment is Inclusive. The code amendment process for recreational marijuana uses should seek and include input from a wide range of stakeholders.

The Seattle Times

City of Bellevue, City Clerk
Kelly Wilson
PO Box 90012

Bellevue, WA 98009

Re: Advertiser Account # 100791

Agency Account #: 0

Ad #: 381692

Agency Name:

Affidavit of Publication

STATE OF WASHINGTON
Counties of King and Snohomish

The undersigned, on oath states that he/she is an authorized representative of The Seattle Times Company, publisher of The Seattle Times of general circulation published daily in King and Snohomish Counties, State of Washington. The Seattle Times has been approved as a legal newspaper by others of the Superior Court of King and Snohomish Counties.

The notice, in the exact form annexed, was published in the regular and entire issue of said paper or papers and distributed to its subscribers during all of the said period.

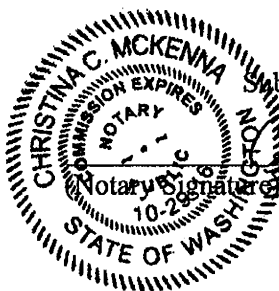
Newspaper and Publication Date(s)

Seattle Times

11/18/13

Agent MAUREEN E DUGGAN

Signature Maureen E Duggan



Subscribed and sworn to before me on

Nov. 19th 2013

Christina C. McKenna

Notary Public in and for the State of Washington, residing at Seattle

The Seattle Times

Re: Advertiser Account # 100791

Ad #: 381692

Agency Account #: 0

Agency Name:

AD TEXT

City of Bellevue Notice of Public Hearing Interim Official Control Regulations Recreational Marijuana Uses

NOTICE IS HEREBY GIVEN that the Bellevue City Council will hold a public hearing during its 8:00 pm Regular Session meeting on Monday, December 2, in the City Council Chamber in Bellevue City Hall, 450 110th Ave NE, Bellevue, on the interim zoning control regulating the location of recreational marijuana producers, processors, and retailers and providing operation and performance criteria to protect neighborhoods from the impacts related to the operation of recreational marijuana uses. On October 21, 2013, the Bellevue City Council adopted Ordinance No. 6133 B-1 adopting an official interim zoning control regulating recreational marijuana uses for a period of six months to be in effect while the City drafts, considers, holds hearings, and adopts permanent regulations. The purpose of the December 2 public hearing is to provide an opportunity to take written and oral comments regarding the interim regulations and their potential extension for a six month period. The Growth Management Act, RCW 36.70A.390, authorizes cities to adopt interim official control provided cities hold a public hearing within 60-days of adoption. The December 2, 2013, public hearing satisfies this requirement. Cities may also renew the interim official control for one or more six-month periods if a subsequent public hearing is held.

Comments: Any person may participate in the public hearing by submitting written comments to the City Council in care of Myrna Basich, City Clerk, P.O. Box 90012, Bellevue, WA 98009, or the Director of the Development Services Department at the same address before the public hearing, or by submitting written comments or making oral comments to the City Council at the hearing. All written comments received by the City Clerk or Director will be transmitted to the City Council no later than the date of the public hearing. Written comments will also be accepted and may be mailed or e-mailed to Catherine Drews, Legal Planner, Development Services Department, City of Bellevue, P.O. Box 90012, Bellevue, Washington, 98009-9012 or by e-mail to cdrews@bellevuewa.gov. Comments must be received by 5:00 pm, on December 2, 2013.

Meetings are wheelchair accessible. American Sign Language (ASL) interpretation is available upon request. Please phone 425 452-7810 or 711 (TDD Relay Service) by noon Wednesday preceding the Monday night meeting if you require interpretation services. Assisted Listening Devices are also available upon request.

Applicant Contact: Catherine Drews, Development Services Department, 425-452-6134.

Questions relating to the public hearing process: Myrna Basich, City Clerk, 425-452-2733.

City Council Regular Session
Monday, December 2, 2013.

Meetings start at 8:00 PM

Bellevue City Hall, Council Chambers
450 110th Avenue NE, Bellevue, WA

Affidavit of posting has been filed with the City Clerk for the Bellevue City Council.

Dated this 14th day of November, 2013,
Myrna Basich, City Clerk